

## EXHIBIT C TO JOHN SHOTTON DECLARATION



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawskey  
Superintendent

**FROM: Benjamin M. Lawskey, Superintendent of Financial Services**  
**RE: Illegal Online Payday Loans Offered and Sold to New York Customers**

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We are writing you in connection with the ongoing investigation being conducted by the New York State Department of Financial Services ("DFS" or "Department") into illegal online payday lending. Payday loans are short-term loans, typically an advance on a future paycheck or other income source. Usurious payday loans are illegal in New York, and such loans are void and unenforceable. Under General Obligations Law § 5-501 and Banking Law § 14-a, loans or forbearances under \$250,000, made by non-bank lenders, with an interest rate exceeding 16 percent per annum, constitute civil usury and are illegal. Further, under New York Penal Law §§ 190.40-42, loans made in New York with an interest rate exceeding 25 percent per annum constitute criminal usury.

The Department has uncovered dozens of out-of-state lenders who have used the Internet to solicit and provide illegal payday loans to consumers in New York. Typically, these lenders charge fees that, when annualized, result in interest rates far in excess of the legal limit. New York consumers who take out these supposedly short-term loans quickly get caught in a vicious cycle of long-term debt; the loans become difficult if not impossible to pay off due to the triple- and quadruple-digit interest rates, together with overdraft fees. To address their unlawful activity, DFS today sent letters to 35 payday lenders directing them to cease and desist offering to lend and lending monies at usurious rates in New York. The lenders include:

- ABJT Funding, LLC d/b/a Dollar Premier
- Advance Me Today
- American Web Loans
- Archer Direct, LLC
- Bayside Loans
- BD PDL Services, LLC d/b/a Bottom Dollar Payday
- Blue Sky Finance, LLC d/b/a ExtraFunds Cash
- BS Financial Group Inc. d/b/a Payday Accelerated
- Cash Jar
- Cash Yes
- Discount Advances
- DMA Financial Corp. d/b/a VIP Q-Loot
- Eastside Lenders, LLC
- Fast Cash Personal Loans
- Golden Valley Lending
- Government Employees Credit Center, Inc. d/b/a Cash Direct Express
- Great Plains Lending, LLC

- Horizon Opportunities, LLC d/b/a Lifestyle Services
- Loan Point USA Online
- MNE Services, Inc. d/b/a AmeriLoan, UnitedCashLoans, US Fast Cash, 500 Fast Cash
- MobiLoans, LLC
- MyCashNow.com, Inc.
- National Opportunities Unlimited, Inc. d/b/a Itsmypayday.com, TheCashSpot.com
- Northway Broker Ltd. d/b/a Zip19
- PayDayMax, Ltd.
- Peak 3 Holding, LLC d/b/a iCashLoans
- Plain Green, LLC
- Red Rock Tribal Lending, LLC d/b/a CastlePayday.com
- SCS Processing d/b/a Everest Cash Advance
- SFS, Inc. d/b/a One Click Cash, Preferred Cash Loans
- Sonic Cash
- Sure Advance, LLC
- Tribal Credit Line d/b/a Quick Credit 911
- United Consumer Financial Services, Inc. d/b/a EZPaydayCash
- Western Sky Financial, LLC

DFS will aggressively pursue appropriate enforcement against payday lenders that refuse to cease and desist from their illegal activity in New York.

Illegal payday loans made over the Internet are made possible in New York by credits and debits that must pass through the Automated Clearing House (“ACH”) network. The current ACH network appears to allow illegal loans to flow through New York without sufficient mechanisms to prevent or block these debits or credits as they occur. According to the Operational Bulletin released recently by NACHA, the organization that manages the ACH network, the borrower’s bank, or the Receiving Depository Financial Institution (“RDFI”), “has no basis or information to make an independent judgment as to whether any specific transaction was properly authorized and relates to a bona fide, legal transaction.” ACH Operations Bulletin #2-2013, High-Risk Originators and Questionable Debit Activity, March 14, 2013. The RDFI only becomes aware of the “questionable debit activity when it is contacted by its customer.” *Id.* This is deeply concerning to the Department. The RDFIs would be a great asset in preventing their customers from being victimized by these illegal loans if they were aware of questionable activity before such debits were made. As such, changes to the ACH network may be necessary.

NACHA also places the onus on the banks originating the debits, also known as the Originating Depository Financial Institutions (“ODFIs”), as “gatekeepers of the ACH Network,” to conduct sufficient due diligence consistent with NACHA Operating Rules. The Department is interested in the steps the ODFIs are taking to monitor compliance among the above-listed and any other loan originators who are using the ACH network to violate New York laws.

Access to the ACH system is the foot in the door that online payday lenders need to prey on vulnerable New Yorkers. And banks have proven to be – even if unintentionally – an essential cog in the vicious machinery that these purveyors of predatory loans use to do an end-run around New York law.

We are requesting that you work with us to create a new set of model safeguards and procedures to choke off ACH access to the 35 illegal lenders DFS's investigation has identified to date, as well as the broader payday lending industry. Doing so is not only in the interest of your customers who will be better protected from these predatory loans. It is also in your bank's long-term interest to take appropriate action to help ensure that it is not serving as a pipeline for illegal conduct.

The Department therefore requests that you inform us of the steps that you are taking, in your capacity as either an ODFI, RDFI or both, as applicable, to stop illegal payday loans from entering into New York through the ACH network. We are interested in the steps you are able to take now, and what changes are necessary both within your bank and at the ACH network level to stop these illegal loans.

Through a cooperative effort with the banking industry, we can work together to stamp out these pernicious, illegal payday loans in New York. To further that cooperative undertaking, we request the opportunity to meet with you and your designees with knowledge of the ACH network and NACHA rules and processes. Please contact at your earliest convenience Executive Deputy Superintendent Joy Feigenbaum, Financial Frauds & Consumer Protection, at (212) 480-6082, to set up a mutually convenient time to meet. We look forward to working with you on this important issue.

## **Recipients of Letter**

Bank of America Corp.  
Capital One Financial Corporation  
Citigroup, Inc.  
HSBC North America Holdings, Inc.  
J.P. Morgan Chase & Co.  
Keycorp  
M & T Bank Corporation  
PNC Financial Services Group  
TD Bank  
U.S. Bancorp  
Wells Fargo & Company  
Alpine Capital Bank  
Adirondack Bank  
Adirondack Trust Company, The  
Alden State Bank  
Alma Bank  
Amalgamated Bank of NY  
Amerasia Bank  
American Community Bank  
AmeriCU Credit Union  
Apple Bank for Savings  
Banco Popular de Puerto Rico  
Banco Popular North America  
Bank Hapoalim B.M.  
Bank Leumi Le-Israel B.M.  
Bank Leumi USA  
Bank of Akron  
Bank of Castile, The  
Bank of Cattaraugus  
Bank of Holland  
Bank of Millbrook  
Bank of Richmondville  
Bank of Utica  
Berkshire Bank Municipal Bank  
Berkshire Bank, The  
Branch 6000 NALC Credit Union  
Buffalo Service Credit Union  
Catskill Hudson Bank  
Cattaraugus County Bank  
CFCU Community Credit Union

Spring Bank (formerly CheckSpring)  
Chemung Canal Trust Company  
Citizens Bank of Cape Vincent  
Country Bank  
CMS Bank  
Cross County Savings Bank  
Directors Choice Credit Union  
Elmira Savings Bank  
Emigrant Bank  
Emigrant Mercantile Bank  
Empire Branch 36 NALC Credit Union  
Empire State Bank  
Empire State Credit Union  
Encompass Niagara Credit Union  
Erie County Employees Credit Union  
Fairport Savings Bank  
First American International Bank  
First Central Savings Bank  
Five Star Bank  
Flushing Bank  
Fulton Savings Bank  
Genesee Regional Bank  
Global Bank  
Gold Coast Bank  
Greene County Commercial Bank  
Habib American Bank  
Hanover Community Bank  
Hudson River Community Credit Union  
Interaudi Bank  
Israel Discount Bank of New York  
Jamestown Post Office Employees Credit Union  
Jeff Bank  
Medina Savings and Loan Association  
Melrose Credit Union  
Montauk Credit Union  
Municipal Credit Union  
New York Commercial Bank  
New York Community Bank  
NewBank  
Newspaper Employees Credit Union  
Niagara Falls Penn Central Employees Credit Union  
Niagara Frontier Federal Employees Credit Union

North Country Savings Bank, The  
Norton-Troy Employees Credit Union  
Oneida Savings Bank  
Orange county Trust Company  
Pathfinder Bank  
Pathfinder Commercial Bank  
PCSB Commercial Bank  
Pioneer Commercial Bank  
Pioneer Savings Bank  
Progressive Credit Union  
Provident Municipal Bank  
Putnam County Savings Bank  
Rhinebeck Bank  
Ridgewood Savings Bank  
Riverside Bank  
Rondout Savings Bank  
Savoy Bank  
Sawyer Savings Bank  
Signature Bank  
Solvay Bank  
State Bank of Chittenango  
Steuben Trust Company  
The Dime Savings Bank of Williamsburgh  
NorthEast Community Bank  
Tioga State Bank  
Tompkins Trust Company  
Ulster Savings Bank  
United International Bank  
United Orient Bank  
USNY Bank  
Victory State Bank  
Watertown Savings Bank  
Westchester Bank, The  
WSB Municipal Bank  
Yonkers Postal Employees Credit Union